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IN THE

Supreme Court of the United States

TERM, 1967

NO:_____

UNITED STATES OF AMERICA, EX. REL.
HOWARD CHARLES LIPSITZ, *Petitioner,*

VERSUS

MAJOR GENERAL GINES PEREZ, COMMANDING GENERAL, FORT JACKSON, SOUTH CAROLINA, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioner, Howard Charles Lipsitz, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit entered in the above entitled case on January 27, 1967, Re-hearing of which was denied on March 6, 1967.

CITATION TO OPINIONS BELOW

The Order denying a Re-hearing by the United States Court of Appeals for the Fourth Circuit is the final judgment of that court, is not reported and is set forth in the appendix hereto, *infra* p. 15. The opinion of the United States Court of Appeals for the Fourth Circuit render-

ed January 27, 1967 is not reported and is set forth in the appendix hereto, *Infra* pp. 13-15. The opinion of his Honor, Robert W. Hemphill, Judge, United States District Court for the District of South Carolina is not reported and is set forth in the appendix hereto, *infra* pp. 2-12.

JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit was entered January 27, 1967, *infra* pp 13-15. Petition for re-hearing was denied by the United States Court of Appeals for the Fourth Circuit on March 6, 1967, *infra* pp. 15.

The jurisdiction of this court is invoked pursuant to Title 28, United States Code, Section 1254(1), petitioner having asserted below, and is asserting here, deprivation of rights, privileges and immunities secured by the Constitution of the United States, and denial of due process of law.

QUESTIONS PRESENTED

1. Whether the Petitioner, Howard Charles Lipsitz was denied due process of law and equal protection of the law as secured by the Fourteenth and Fifth Amendments of the Constitution of the United States, when Petitioner, Howard Charles Lipsitz was ordered inducted into the armed services by Local Draft Board No. 37 of Paterson, New Jersey, after the said draft board had violated 32 C. F. R. 1627.5 and 1627.8 by failing to notify the Petitioner that there was a Presidential Appeal being taken in his behalf and by failing to cancel the order of induction issued prior to the Presidential appeal as required by the above numbered regulations.

2. Whether the Petitioner, Howard Charles Lipsitz was denied rights conferred upon him by law and guaranteed by the Fourteenth Amendment in that because of the violation of regulations 32 C. F. R. 1627.8, he was immobil-

ized and unable to take any steps, such as were being taken by others and which were authorized by law to place himself in a draft exempt status.

3. Whether the conflicting application of the Selective Service regulations presents a question to be resolved by this Court; the regulations issued by the Director of Selective Service under the terms of the act are the law. Certain circuits treat the regulations as guidlines only while others treat them as binding law thereby creating a conflict which can only be resolved by this court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. This case involves Section 1 of the Fourteenth Amendment and the Fifth Amendment to the Constitution of the United States.

2. This case involves the Selective Service Act, 50 App. U. S. C., Section 460 (4) Subsections (b) (1) and (c).

3. This case involves the following Selective Service Regulations:

> *"32 C. F. R. 1627.3: Appeal to President:* When a registrant has been classified by the Appeal Board and one or more members of the Appeal Board dissented from that classification the registrant, any person who claims to be a dependent of the registrant, or any person who prior to the classification appealed from, filed a written request for the current occupational deferrment of the registrant may appeal to the President within 10 days after the mailing by the local board of the Notice of Classification (SS Form No. 110) notifying the registrant of their classification by the Appeal Board."
>
> *"32 C. F. R. 1627.5 Procedure on Appeal to the President.* (a) When an appeal to the President is taken, the local board shall (1) notify the registrant that the

appeal has been taken when ever it is taken by any person other than the registrant; (2) if the registrant's file is in its possession, forward the entire file to the State Director of Selective Service; and (3) enter on the Classification Record (SSS Form No. 102) under "remarks" the date the file is forwarded or the date it receives notice that an appeal to the President has been taken. (b) When an appeal to the President is taken, the State Director of Selective Service shall check the file which is in his possession or which is forwarded to him to be sure that all procedural requirements have been properly complied with, including notice to the registrant that such an appeal has been taken, and, if he discovers any procedural defect, return the file for correction. If any information has been placed in the file which was not considered by the local board in making the classification from which the appeal to the President is taken, the State Director of Selective Service shall review such information and, if he is of the opinion that such information, if true, would justify a different classification of the registrant, return the file to the local board with instructions to reopen the registrant's classification and classify the registrant anew.

(c) When the State Director of Selective Service has complied with the provisions of paragraph (b) of this section, he shall, unless "the file is returned to the local board, forward the file to the Director of Selective Service."

"*#1627.8. Appeal to the President stays induction.* The local board shall not issue an order for a registrant to report for induction either during the period afforded to the registrant to take an appeal to the President or during the period such an appeal is pending. Any order to report for induction which has been issued during either of such periods shall be ineffective

and shall be cancelled by the local board. Whenever an appeal to the President has been taken by a person entitled to do so, any order to report for induction which has previously been issued to the registrant shall be ineffective and shall be cancelled by the local board."

STATEMENT

The Petitioner, Howard Charles Lipsitz is a citizen and resident of Patterson, New Jersey, was attending Rutgers University and upon attaining age 18, as required by law, registered under the provisions of the Selective Service Act at New Brunswick, New Jersey, on October 15, 1958.

Through the years that have followed the registration of the Petitioner, there have been numerous classifications, deferrments and appeals, all of which has created an extremely voluminous record most of which is not pertinent to the solution of the questions involved in this case.

The chronology of events which bear directly on the issues begin with the decision of Appeal Board Panel #2 of New Jersey, classifying the Appellant 1-A, notice of which was conveyed to Petitioner under date of October 20, 1966 by Local Board #37 of Paterson, New Jersey. (A37). (Note: All appendix references refer to Appellant's Appendix in the record unless otherwise noted.)

On October 22, 1965, evidently before receiving the above notice, Petitioner notified Local Board #37 that his address was 138 G. Street, S. W., Washington, D. C. and requested that all future correspondence be directed to that address. (A38)

On November 1, 1965, Petitioner was ordered to report for induction on November 19, 1965. (A 40)

On November 9, 1965, the Petitioner requested transfer to Washington, D. C. where he was living (A 41) which request was granted as a matter of routine and a new Order to Report for Induction was issued by Local Board

#3 of Washington, D. C. (A 42) setting December 9, 1965 as the date of induction.

On November 24, 1965, the National Director of Selective Service requested that Petitioner's induction be postponed. (A 43)

Under date of November 29, 1965, the Petitioner was notified that his induction had been postponed. (A 45)

This letter stated: "THIS DOES NOT CANCEL YOUR ORDER TO REPORT, BUT MERELY DELAYS THE DATE OF YOUR DELIVERY FOR INDUCTION."

Under date of December 13, 1965, Petitioner again notified Local Board #37 that he lived in Washington, D. C. and gave them his new street address. (A 47)

By letter dated December 29, 1965, National Selective Service Headquarters notified the N. J. State Director of Selective Service that a Presidential Appeal had been taken on behalf of the Petitioner and gave his then current address. (A 49)

Under date of January 5, 1966, the N. J. State Director notified Local Board #37 of the action of the National Director. (A 51)

Under date of February 25, 1966, Petitioner's records were returned from the State Board to Local Board #37. (A 53)

Under date of March 3, 1966, Petitioner received a notice of classification (SSS 110) from Local Board 37, Paterson, New Jersey, informing him that his classification was 1-A as a result of a 2 to 1 vote by the Presidential Review Board, this was the first official written notice that Petitioner had received of the appeal and its results.

Under date of March 16, 1966, Petitioner received a letter from Daniel C. Omer, Deputy Director which notified him of the action of the Presidential Appeal Board, the

first official notice that Petitioner had himself received of the appeal and its results. (A 54)

The Petitioner was again, under date of March 21, 1966, ordered to report on April 7, 1966 (A 57), which date was again postponed at Petitioner's request because of the Jewish Holidays. His induction was re-scheduled and Petitioner was inducted into the Army of the United States on May 17, 1966.

The Petitioner, Howard Charles Lipsitz filed his Petition for Writ of Habeas Corpus in the United States District Court for the District of South Carolina on the 24th day of May, 1966. (A 1-9) An Order for Writ was issued by His Honor, Robert W. Hemphill, United States District Judge on May 25, 1966. (A 11-12)

The Writ (A 13) issued by Miller C. Foster, Clerk of the United States District Court, set July 25, 1966 at 10:00 A. M., at Chambers, United States Court House, Columbia, South Carolina, as the time and place that the Petitioner should be brought before the Court and inquiry made as to the reasons for his detention. (in the Army of the United States.)

After one short postponement, a hearing was duly held on July 27, 1966.

On July 21, 1966, a Return to the Petition was filed on behalf of the Respondent by Terrell L. Glenn, United States Attorney, (A 14-16).

On the basis of the Respondent's Return and the hearing of July 27, 1966, the proceedings were dismissed by Order of His Honor, Robert W. Hemphill, United States District Judge, which Order is dated November 2, 1966 and filed November 4, 1966. *Infra* pp. 2-12.

From the Order of His Honor, Robert W. Hemphill, Judge, United States District Court for the District of South Carolina, the Petitioner appealed to the United

States Court of Appeals for the Fourth Circuit presenting the following questions:

1. Do regulations issued for the governing of registrants, draftees and draft boards have the force and effect of law to be applied equally and with equal force and effect to all registrants, draftees and draft boards or are they merely guidelines to be applied at the whim or caprice of any given draft board as any given situation may indicate to the board to be desirable.

2. Did Draft Board #37 of Paterson, N. J., violate regulations having the force and effect of law in its handling of Petitioner's case.

3. If it is determined that in fact Draft Board #37 of Paterson, N. J., violated regulations having the force and effect of law and if as a result of the actions of the said draft board, the Petitioner is held to service in the Army of the United States, is the Petitioner held illegally and if so should he be discharged.

The United States Court of Appeals for the Fourth Circuit sustained the Order of His Honor, Robert W. Hemphill, Judge of the United States District Court for the District of South Carolina by an opinion dated January 27, 1967, *infra* pp. 13-15, and denied re-hearing on March 6, 1967, which order is a final judgment in this case. *Infra* pp. 15.

REASONS FOR GRANTING THE WRIT

Petitioner was denied his liberty and due process of law and equal protection of the laws when he was inducted into the Army of the United States under protest and without any regard to violations of regulations by Local Board #37 of Paterson, New Jersey, which would seem to render his induction order a nullity.

Under the provision of 32 C. F. R., 1627.5 a local draft

board is required to notify a registrant when an appeal to the President has been taken in his behalf by another.

Under the provisions of 32 C. F. R., 1627.3 a registrant can take an appeal to the President on his own behalf only in the event a member of the State appeals board dissented from the majority opinion.

In this case there was no dissent at the state level and the appeal, of necessity, had to be taken by someone other than the registrant and in fact was taken by the Director of Selective Service, General Lewis B. Hershey.

The existence of the appeal brought into operation the provisions of C. F. R. 1627.8, which requires that any order of induction issued prior to an appeal to the President shall be *cancelled.*

The order of the district court (infra. pp. 10) and the opinion of the Court below (infra. pp, 13) note that the required notice was not given nor was the order of induction cancelled; in fact as to the latter, the local board was at great pains to establish that the order was not cancelled. Instead of confining its communication to the usual prepared notice, the board wrote the registrant a letter (Appellant's App. A 45). This letter stated in unequivocal terms that: *"This does not cancel your order of induction, but merely delays the date of your delivery for induction."*

Both the district court and the circuit court of appeals equated this case with the case of *Martin v. The United States,* 190 Fed. 2d. 775, drawing from the evidence the conclusion that the Petitioner had actual knowledge of the existence of the Presidential Appeal.

In the *Martin* case the registrant was present at the meeting of the draft board at the time a decision was reached and was notified at the time by the chairman of the board, in person.

Actual notice in this case is inferred from a statement of the registrant that he and a secretary in Senator Case's

office speculated that an appeal might have been taken to the President since that was what had been requested. It is submitted that speculation by uninformed people does not substitute for actual notice.

In order to draw a conclusion of actual knowledge, it was necessary to lift even that statement out of context. The full testimony on the subject is as follows: (A. 73 and 74)

> "Now, during this time, after this, for about two months almost every day I called Senator Case's office and asked if they had heard anything on my case. The secretary I talked with didn't have any information at all from National. She speculated—this is speculation—that they might have put the file in a corner somewhere, maybe they didn't want to bother with it, maybe it's too hot to handle. She didn't know why. She said, "Let's leave them alone to decide their own.' (interrupted by court)"

The letter to Local Board #37 to which the court below referred (infra. p. 14) was written March 3, 1966 after the registrant had received formal notice. The letter to the President dated March 3, 1966 to which the opinion refers, infra. p. 15 was likewise written after formal notice had been received.

The period about which the Petitioner complains is from November 29, 1965 to about March 1, 1966 and the actual uncontradicted testimony in the evidence is as follows: (75 and 76)

> "THE WITNESS: On March the 3rd, as I said I received a Form SSS-110 which is a notification of classification by one of the various agencies of Selective Service appeal board, and this was from the Presidential Board and it was effective on March 1st. And it said by appeal of the President my classification was 1-A. And this is when I realized officially that I did have an appeal before Senator Case called me and

told me that it was granted not in my favor unanimously, which turned out to be not true either. The case was decided on a two to one vote in order to have me maintained in a 1-A classification.

Subsequent to that I received the second induction notice by my local board and then was inducted.

Q. Did you ever receive a notice from your draft board or from National Selective Service Headquarters that a Presidential Appeal had been taken in your behalf?

A. I received a letter from Daniel Omer, which was in reply to a letter that I sent. And this was on, I think it was March 16th, stating—

Q. What year?

A. Pardon me, sir?

Q. What year?

A. March 16, 1966, stating that General Lewis B. Hershey took a Presidential Appeal on December 14th. This is the only official notification that I had other than the SSS Form. 110. This, of course, confirmed that. But that's the only notification that I did receive of the Presidential Appeal.

Q. December the 14th, the time that General Hershey took the Presidential Appeal, until March the 3rd, I believe you said—March 16, 1966; did you have any notice of any cancellation of your notice or of your order of induction?

A. No, not even 'til that date. I never received notice of cancellation of my—of the first induction order, never received any of it at all. I did, when I went before my local boards, look at my records and I did see letters from General Hershey and from the National —from the State Director saying the appeal was taken but that's the only notification that I did have that

the appeal was taken as I stated. No cancellation notice though at all."

Attention is invited to the words where the Petitioner states that he went before his local board and saw evidence of the Presidential Appeal in his records and to which the court below referred in its opinion, without, however, noticing that the event occurred on the 1st of April of 1966 as is shown by letter of the Petitioner to Local Board #37 dated April 5, 1966 (Appellee's App. 11) referred to by the court.

It is clear that the court below has confused the facts and has drawn unwarranted conclusions from portions of the evidence taken out of context and that the true facts are that the Petitioner had no notice, either actual or formal, of the existence of a Presidential Appeal, that the Petitioner's induction order was never cancelled and that Local Board #37 was in clear violation of the regulations herein quoted, and that as a result the Petitioner was illegally ordered inducted and in violation of the guarantees of the 5th and 14th Amendments to the Constitution of the United States is wrongfully held to service in the Army of the United States, and deprived of his liberty.

Regardless of notice, the court below has totally overlooked the requirement of 1627.8 that the order for induction be cancelled; and the fact that the local board went to great lengths to avoid complying with this very portion of the regulations.

Since his order of induction was not cancelled the registrant was totally and illegally immobilized.

Regardless of what judges might think as to his intentions with respect to joining a reserve unit; with his induction order uncancelled he could not if he would. He was legally barred from such a course as long as the order existed; and it is beyond the power of any court to hold that the individual was not prejudiced when he was prevented

by superior authority from taking an action which he had a legal right to take. When the Petitioner was denied his legal rights he was prejudiced, whether the court believed he would exercise his rights or not exercise his rights is beside the point and totally irrelevant. He had a constitutional right to the opportunity to exercise them and was denied due process when that opportunity was taken away from him.

This attitude was taken by this Court in *Simmons v. U. S.*, 348 U. S. 397, 99 L. Ed. 459.

The court referring to the failure of the Department of Justice to furnish the registrant with a resume of a report in his case, used the following language:

> "Petitioner has been deprived of a fair hearing required by the Act, a fundamental safeguard and he need not specify the precise manner in which he would have used this right—and how such use would have aided his cause—in order to complain of deprivation."

Writ of Certiorari should be granted in this case on the same grounds as existed in the case of *Commissioner v. Bilder*, 369 U. S. 499. This case presents, as did the Bilder case, a need for uniform rule on the point in issue.

The court below acknowledges that the regulations required that the registrant be notified and that his induction order be cancelled in the event that a Presidential Appeal is taken by someone other than the registrant, but goes on to state, "The law is settled that procedural irregularities in the administration of the Universal Military Training and Service Act, 50 U.S.C.A. App. SS 451 et. seq. which do not result in prejudice, will not support a claim for relief."

It is submitted that in this case the violation of the regulations by the local board was more than a mere procedural irregularity and that the violation did result in prejudice to the Petitioner; and that furthermore, the court is mistaken in its belief that the law is well settled in this respect.

The court cites the following cases in support of that position: *United States v. Lawson*, 337 F. 2d 800 (3 Cir. 1964); *Pate v. United States*, 243 F. 2d 99, 104 (5 Cir. 1957); *United States v. Mekolichick*, 234 F. 2d 71 (3 Cir. 1956); *Martin v. United States*, 190 F. 2d 775 (4 Cir. 1951); *United States v. Deahl*, 151 F. 2d 413 (8 Cir. 1945).

The *Martin* case is probably not supportive of the court's position since Martin was personally present at the board meeting which rendered a decision in his case; however, the remaining cases cited would seem to support the court's position although they concern themselves only with such irregularities as: sign with a rubber stamp or failing to post a list of advisors, with the exception of the *Deahl* case from the Eighth Circuit which covers the question of notice.

There are, however, other cases which are clearly in conflict: *The United States v. Fry*, 203 F. 2d 638 (2d Circuit); *United States v. Hufford*, 103 F. Supp. 859 (U. S. District Court, M. D. Penn.); *United States v. Styles*, 169 F. 2d 455, (3rd Cir. 1948); and *The United States v. Zieber*, 161 F. 2d 90 (3rd Circuit); *U. S. ex rel. Berman v. Craig*, 207 Fed. 2d 888, (3rd Circuit); *Bejalis v. U. S.*, *Walker v. U. S.*, 206 Fed. 2d 354 (6th Circuit); *Tung v. U. S.* 142 Fed. 2d 919 (1st Circuit).

The case among those cited above most clearly adverse to the decision in the present case is *United States v. Styles*, 169 Fed. 2d. 455, which was decided by the United States Court of Appeals for the Third Circuit.

This case has been followed by others and no doubt the decision will continue to be followed in some areas as will the decision of the Fourth Circuit in this case, all depending upon the personal predeliction of the judge or judges sitting at the time. Under these conditions it can hardly be said that the law is well settled.

If there is confusion between the several courts as to the principles involved, the confusion must be still greater

among the more than four thousand draft boards in the United States.

The regulations were drafted and promulgated for the governance of the draft boards in their relations with registrants considered for induction. It would seem to be unreasonable and not in keeping with the intent of the law to allow each of more than four thousand draft boards to place its own interpretation on the regulations, and to violate any it seems fit to violate and then place the burden of proving prejudice or injury on the registrant, very few of whom would be in a position to litigate the matter.

In this connection, reference is made to *U. S. v. Greene*, 220 Fed. 2d 793, where the court said:

> "Selective Service System means just that. It is the sifting and testing process by which individual eligibility, exemption and deferment are determined with Congressional blueprints and enumciated Legislative policy. While classification is the democratic method for obtaining military manpower it is not an adversary proceeding in which the slightest misstep mechanically penalizes registrants."

* * * *

"In these times men everywhere closely watch how this Nation administers and follows announced principles. The validity of tolerance lies in substance and results, not in mere lip service."

It may well be that decisions such as this permitting the uneven and capricious application of the draft laws is one of the reasons for the nationwide dissatisfaction with the draft laws as they now exist.

The theory underlying the decision in this case either has or certainly will result in each draft board operating under its own draft laws.

It is submitted that this was not the legislative intent; that the decision in the *Styles* case is based upon the correct

interpretation of the law and that this Petitioner has been deprived of his rights under the Fifth and Fourteenth Amendments to the Constitution of the United States by the court's erroneous interpretation of the facts and theory on which these rights rest.

For the foregoing reasons, it is respectfully submitted that the Petition for Writ of Certiorari should be granted.

Theodore W. Law, Jr.,
1226 Bull Street,
Columbia, South Carolina,
Attorney for Petitioner.

APPENDIX

APPENDIX INDEX

Order of Judge Hemphill A-1

Opinion of U. S. Court of Appeals A-13

Order of Fourth Circuit Denying Re-Hearing A-15

1a

ORDER OF JUDGE HEMPHILL

Howard Charles Lipsitz petitions the court for relief from an alleged illegal induction under the Selective Service System.[1] He claims that the Selective Service Regulation 32 C. F. R. 1627.8 has not been complied with, and that therefore his induction was illegal. The Regulation provides as follows:

> The Local Board shall not issue an Order for a registrant to report for induction either during the period afforded the registrant to take an appeal to the President or during the period such an appeal is pending. Any order to report for induction which has been issued during either of such periods, shall be ineffective and shall be cancelled by the Local Board. Whenever an appeal to the President has been taken by a person entitled to do so, any order to report for induction which has previously been issued to the registrant shall be ineffective and shall be cancelled by the Local Board. 32 C. F. R. 1627.8.

Lipsitz maintains that an appeal which was pending before the President should have delayed or prevented his induction. When the matter was originally brought before the Court the respondent, the Commanding General of Fort Jackson, was enjoined to take no action regarding the petitioner other than to continue with the basic infantry training which was then in progress. The injunction was dissolved after the hearing before the court. There existed no further hindrances which would have prevented the petitioner from continuing in the privilege of serving his country. Since then no further considerations or changed circumstances have been brought to the attention of the court. The court, therefore, in ruling on the petition makes the following findings of fact:

---

[1] See 50 App. U. S. C. A. §§ 451-454 and §§ 455-471.

Howard Charles Lipsitz, a resident of Paterson, New Jersey, was attending Rutgers University when he reached age eighteen. He was required by law to register with the Selective Service System prior to September 28, 1958. On October 15, 1958 Lipsitz registered at New Brunswick, New Jersey, the location of Rutgers, giving as his reason for registering eighteen days late, "my classes at Rutgers University kept me from registering within the allotted time."

December 1, 1958: Lipsitz classified 1-A.

December 8, 1961: Notice was sent to the Petitioner showing that he would soon be selected for an Armed Forces physical and information concerning his status was desired by the Draft Board. He forwarded a questionnaire to his Local Board showing that he was a senior in college and would graduate in June 1962. The Local Board did not call him for a physical, apparently because he was then a student and in effect the Local Board granted him a deferment until he would graduate.

June 3, 1963: Petitioner again classified 1-A and on June 12, 1963 Lipsitz requested a personal appearance before the Local Board in order to appear his classification as he was then a full time teacher.

September 17, 1963: Notice sent to Petitioner to report for his Armed Forces physical on October 8, 1963.

September 19, 1963: Lipsitz submitted information to the Local Board that on September 17 he had enrolled at New York University for work toward his Master's Degree and he expected to graduate in June or July 1964.

October 23, 1963: Petitioner wrote the Selective Service System in Washington, D. C., requesting the law on the Selective Service System. He was furnished information on how he could obtain a copy of the law. At the hearing in this court Petitioner stated that he had received a copy of the regulations.

October 23, 1963: Petitioner sent a letter to President John F. Kennedy complaining of the attitude of the Local Board toward drafting college graduates; alleging that English teachers should not be drafted (Lipsitz taught English); stating that an Executive Order should be issued exempting teachers from the Army; reflecting that Lipsitz had already written his Congressman about the matter, and; setting forth "I don't like the idea of spending two years in the Advanced Combat Group as a few friends, ex-teachers, are currently doing."

November 4, 1963: An official from the National Selective Service Headquarters called to the Local Board to obtain information on Lipsitz.

November 18, 1963: Petitioner had a hearing before the Local Board. He desired a deferment as he was a teacher and as he was taking college courses toward his Masters' Degree. He expected to obtain his Master's in the summer of 1964. The Board denied the deferment and continued him in a 1-A status by a 3-0 vote.

November 22, 1963: Lawrence Lipsitz, the brother of Petitioner, wrote President Kennedy, with copies to Senator Case, Senator Williams, and Representative Joelson, severely attacking the members of the Local Boards in Paterson, New Jersey, stating that Petitioner asked for a deferment until the end of the summer of 1964 in order to enable him to complete his year of teaching and obtain his Degree and that the same was refused. That after August 1964 the Petitioner would naturally expect a reappraisal of his status.

November 27, 1963: Petitioner appealed the findings of the Local Board and again requested a deferment.

November 27, 1963: Senator Case wrote General Hershey, the Director of the Selective Service System, concerning the Petitioner.

December 2, 1963: The Local Board granted Petitioner a deferment and classified him 2-A until June 1, 1964.

Between December 1963 and April 1964 there was considerable correspondence between General Hershey, Senator Case and Senator Williams concerning Petitioner's selective service status with the result that Petitioner's file was sent to the National Headquarters in Washington, D. C. for review.

June 1, 1964: Petitioner wrote the Local Board for a continued deferment as he was a teacher of Science and English. This in spite of the fact that it was the end of a school year. The Local Board refused the deferment and on July 1, 1964, Lipsitz was classified 1-A.

July 10, 1964: Lipsitz filed a notice of appeal of his classification. He stated that he planned to return to full time graduate study at New York University in September 1964 where he planned to take courses leading to a Doctorate.

July 10, 1964: Lipsitz wrote National Selective Service Headquarters complaining of the fact that a large percentage of men were being drafted from the Paterson, New Jersey, area.

During the month of July 1964 letters submitted to the Local Board concerning Petitioner's plans for college; request made by Petitioner for deferment.

August 6, 1964: Petitioner appealed from his 1-A classification of July 29, 1964.

September 3, 1964: Lipsitz appeared before the Local Board for a hearing on his appeal. The minutes of the meeting reflect that he had terminated his job as a teacher and that he planned to start school in September 1964 in a Government-financed course which would pay his fees and tuition and a salary of $75.00 per week. The course would not lead to a Doctorate but would give him credits toward a Doctor's Degree. He requested a deferment to take the course. The Local Board granted the deferment and classified him 2-A until May 22, 1965.

June 9, 1965: Petitioner classified 1-A.

June 18, 1965: Lipsitz applied to the Local Board for an

occupational deferment as he desired to commence work with United Planning Organization on June 21, 1965 which work Petitioner felt was in the national interest.

July 14, 1965: Petitioner was classified 1-A.

July 23, 1965: A notice of appeal was filed by Lipsitz and a request was made for a personal appearance before the Local Board members.

September 1, 1965: Lipsitz appeared before the Local Board and presented his request for occupational deferment. The Local Board classified Lipsitz 1-A by a 4-0 vote.

September 9, 1965: Lipsitz filed a notice of appeal from his classification.

October 19, 1965: The State Appeal Board classified Lipsitz 1-A by a 3-0 vote.

October 26, 1965: A letter was sent from the United Planning Organization to United States Senator Clifford Case requesting that a deferment be granted for Lipsitz.

November 1, 1965: An order to report for induction on November 19, 1965 was forwarded to Petititoner.

November 3, 1965: The United Planning Organization forwarded a letter to the Local Board requesting a 30-day postponement of Lipsitz' November 19 induction date. The Local Board refused the postponement.

November 5, 1965: Letter sent from Petitioner to President Lyndon B. Johnson asking that the President personally intervene and review the case.

November 9, 1965: Lipsitz went to a Local Board in Washington, D. C. and requested a transfer to Washington, D. C. for induction. This was approved the same day.

November 18, 1965: The Transfer Board at Washington, D. C, ordered the Petitioner to report for induction on December 9, 1965.

November 24, 1965: The National Selective Service Headquarters in Washington, D. C. directed that Petitioner's induction be postponed and that his file be forwarded to the National Headquarters for review.

November 29, 1965: Notice sent to Petitioner from his Local Board postponed his induction to the December induction call. An accompanying letter with the notice of postponement stated that the induction was only being postponed and that the outstanding order to report for induction was not being cancelled.

December 29, 1965: Letter addressed from General Hershey to the Local Board giving notice of appeal to the President. The letter was received by the Local Board on January 7, 1966.

The Presidential Appeal Board considered Petitioner's case and on February 17, 1966 Petitioner was classified 1-A by the Presidential Appeal Board.

February 25, 1966: Petitioner's file was returned to the Local Board with a covering letter stating that a finding had been made by the Presidential Review Board.

March 3, 1966: Lipsitz received a notice of his 1-A classification by the Presidential Review Board.

March 3, 1966: Seven page letter sent by Lipsitz to President Lyndon B. Johnson with enclosures stating that subsequent to November 5, 1965 Lipsitz was informed by Senator Case's office that his case would be taken before the Presidential Appeal Board. He was informed by his Local Board that he would be continued in a 1-A classification. He further stated that he would abide by the decision of the Review officials. Petitioner asked the President for a personal review of his case. Copies of the letter were forwarded to the Local Board, General Hershey, Senator Case, Congressman Charles Jackson, Congressman Charles Mathias of Maryland, Congressman Ellsworth of Kansas, Kermit Mohn, Directorate of Manpower Resources, and a copy to the Office of Assistant Secretary of Defense.

March 3, 1966: Petitioner wrote a letter to the Local Board requesting a reconsideration due to occupational deferment and enclosed a copy of the letter written to the President.

March 16, 1966: Letter sent from the National Selective Service Headquarters to Petitioner replying to his previous letters directed to the President stating that the action taken by the Presidential Review Board is final.

March 21, 1966: Lipsitz was ordered to report for induction on April 7, 1966.

March 29, 1966: The United Planning Organization wrote General Hershey asking that Lipsitz be deferred due to his employment with such organization.

March 29, 1966: Lipsitz wrote the Local Board requesting that his April 7 induction date be postponed because it comes during the Jewish holidays.

March 31, 1966: The Local Board rescheduled the induction date to April 18, 1966 in pursuance of Lipsitz' request.

April 1, 1966: Lipsitz went to Paterson, New Jersey and personally reviewed his Selective Service files.

April 5, 1966: Lipsitz wrote the Local Board with copies to President Johnson, General Hershey, Senator Case, and the Civil Liberties Union making general complaints concerning being inducted and stated that he had no official notice of the Presidential Review action except by word of mouth from Senator Case's office. He complained that the regulations were not strictly followed and Lipsitz in such letter quoted the regulations verbatim.

April 14, 1966: The Local Board advised Lipsitz that the evidence submitted by him does not justify reopening his case and he was directed to report for induction as ordered.

April 14, 1966: Petitioner applied to a Local Board in Washington, D. C. for transfer there for induction. Such transfer was approved on the same day.

April 19, 1966: Petitioner wrote the Local Board with copies to President Johnson, Senator Case and General Hershey requesting that the Local Board respond further to

questions set forth in his letter to the Local Board of April 5, 1966.

April 21, 1966: The Local Transfer Board in Washington, D. C., ordered Petitioner to report for induction on May 17, 1966.

April 26, 1966: Lipsitz personally reviewed his file in Paterson, New Jersey.

April 30, 1966: Petitioner wrote the Local Board with enclosures stating that he had accepted a job with New York City which was essential employment. That he had accepted the job earlier in the year to commence work on May 16, 1966. He requested that his case be reopened and that he be reclassified for a period of one year.

May 3, 1966: The Local Board wrote Lipsitz declining to reopen his case and ordered him to report for induction as scheduled. This was passed by the Local Board by a vote of 4-0.

May 11, 1966: Letter sent by Petitioner to Robert S. McNamara with enclosures complaining of the Selective Service System.

ON MAY 17, 1966 HOWARD CHARLES LIPSITZ, THE RELATOR-PETITIONER WAS INDUCTED INTO THE ARMY!

On the foregoing facts the court makes the following conclusions of law.

Because of the alleged defect in his induction the petitioner requests the common law writ of habeas corpus. If he has been wrongfully inducted and if he is entitled to redress then this must be his remedy.

The first proposition to be considered is that everyone is subject to the selective service.[2] Congress has the power to impose compulsory military service on all under the jurisdiction of the sovereign and no one is exempt except by

[2] *E.g.*, Billings v. Truesdale, 321 U. S. 542 (1944); Richter v. United States, 181 F. 2d 591 (9th Cir. 1950) *cert. denied* 340 U. S. 892.

the grace of the government.[3] The obligation to render military service is inherent in citizenship.[4] Mr. Lipsitz must therefore demonstrate to the court that he is being detained wrongfully. Of course had he been classified in a deferred category the matter would never have arisen. The matter of his classification is not challenged directly here, but rather that after he was classified 1-A and instituted the Presidential appeal the Selective Service failed to comply with regulation 32 CFR 1627.8. The essence of the matter is that he was indueted under an Order which he maintains should have been made ineffective and cancelled by the local board during the pendency of his Presidential Appeal. He further claims that he had no notice that Presidential Appeal was being taken; that he was entitled to notice; and that as a result of the series of events he lost a substantial right, that being the opportunity to join a military organization and obtaining the classification that would follow.

Careful scrutiny has been given to the record in this case. It is the opinion of the court that no view of the record would support finding any reasonable justification for further action. No error of significance has been committed by the Selective Service. While the sensibilities of this particular young man may be offended by the prospect of bearing arms for his country there is no credible and reasonable indication that he has been offended in the legal sense. However discomfited he may be in this situation the court cannot help him.

Mr. Lipsitz was classified 1-A in 1965; the order to report for induction was issued November 1, 1965. [He then personally directed an appeal to the President of the United States on November 5, 1965 specifically requesting personal Presidential intervention and review of his case.] On

[3] *E.g.*, Korte v. United States, 260 F. 2d 633 (9th Cir. 1958) *cert. denied* 358 U. S. 928; United States v. Palmer, 223 F. 2d 893 (3rd Cir. 1955); Local Draft Board No. 1 of Silver Bow County, Mont. v. Connors, 124 F. 2d 388 (9th Cir. 1941).

[4] Self v. United States, 150 F. 2d 745 (4th Cir. 1945).

December 29, 1965 General Hershey gave notice to the Local Board that the office of Director of Selective Service was appealing the classification of Lipsitz to the President.

[*No notice of this Director-initiated appeal was forwarded to the petitioner.*] Without notice of appeal, *arguably, the petitioner may have been unaware of the resulting operation of 32 C.F.R. 1627.8 and the cancellation of the order* to report for induction. However, in the case of Mr. Lipsitz that is not an applicable consideration because he initiated a Presidential Appeal himself and *further that he had actual knowledge of the Director-initiated appeal.* This knowledge of the appeal was admittedly obtained through the office of Senator Clifford Case with which Lipsitz was in frequent contact. It is difficult to conceive of anything happening in the case without the petitioner's knowledge for few causes have ever been pursued with the dogged persistence that was demonstrated here. It is worthy of mention that although no formal notice of appeal was sent to the petitioner there was sent to him a notice that the order to report for induction had been postponed. [Moreover, the petitioner possessed no right to have receipt of the notice. See *United States ex rel. Woodward v. Deahl*, 151 F. 2d 413 (8th Cir. 1945.)]

The regulation, 32 C.F.R. 1627.8, provides that during the pendency of an appeal or the period for taking an appeal any order to report for induction "shall be ineffective and shall be cancelled by the Local Board." After December 29, 1965 when the Director appealed, the Local Board took no action to cancel the outstanding order to report. The order had been issued November 1, 1965 and postponed till the December call on November 24, 1965. By the terms of the Regulation itself the order to report was made ineffective by operation of law. The only manner in which it is alleged that the failure to formally issue a cancellation prejudiced the petitioner is that it prevented him from entering a reserve unit. The evidence against this

possibility is overwhelming. Mr. Lipsitz was thoroughly familiar with the Selective Service Regulations. He possessed copies of the regulations. That he was on a familiar basis with the regulations including those regarding Presidential review was exhibited by his testimony as well as by the record.

Prior to January 20, 1966 Selective Service Operations Bulletin No. 277 was in effect which permitted a registrant, although he was under an order to report for induction, to enlist in the Reserves. On January 20, 1966 Operations Bulletin No. 287 was issued, which in effect prevented a registrant from joining the Reserves if he was under an order to report for induction. After Presidential review, the petitioner's order to report for induction was issued on March 21, 1966.

However, there was no period in which he was prevented from joining the Reserves as he was not under an order to report for induction between January 20 and March 21, 1966. Even if he had thought after January 20, 1966 that he was under an order to report for induction, he knew prior to March 3, 1966 that he had been granted a Presidential Review, and that it had effectively cancelled any outstanding order to report for induction. If he had desired to join the reserves, there was no bar to his entry between March 3, 1966 and March 2, 1966. The record in the case makes it difficult to believe that there was any sincere desire to enlist in a reserve component. However, the possibility was open to the petitioner from September 1958 to March 21, 1966. No rights of the petitioner had been prejudiced.

The Supreme Court has said in a leading Selective Service case: "The function of *habeas corpus is* exhausted when it is ascertained that the agency under whose order the petitioner is being held had jurisdiction to act. If the writ is to issue mere error in the proceeding which resulted in the detention is not sufficient. 329 U. S. 304, 311-12

(1946). "The function of *habeas corpus* is not to correct a practice but only to ascertain whether the procedure complained of has resulted in an unlawful detention." *Id.* at 315.

This articulate, educated young man has pit his wits against the Selective Service machinery for a long time. He exhibits great familiarity with the regulations and procedures.

He has been deferred three times, has had his induction postponed four times. He has made six appeals and has had three hearings before the Local Board, one review by the State Board, and a review by the Presidential Appeal Board. Exemptions from the draft is not a matter of right, but, to the contrary, is a matter of grace of the sovereign.[5] The petitioner has failed to show a meritorious claim for release. There was no illegality in his induction.

Proceedings dismissed.

AND IT IS SO ORDERED.

ROBERT W. HEMPHILL
United States District Judge

Greenville, South Carolina
November 2, 1966.

TRUE COPY
Test:
MILLER C. FOSTER, JR., *Clerk*

By: Girlee Rinault
Deputy Clerk

[5] See note 3, supra and accompanying text.

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PER CURIAM:

Appellant, an inductee into the United States Army seeks reversal of an order dismissing his application for a writ of habeas corpus, in which appellant sought his release from the Army on the ground that he was illegally ordered for induction by his local Selective Service Board.

A temporary injunction, restraining appellee, Major General Perez, from transferring appellant from Fort Jackson, South Carolina pending a hearing of this appeal was entered by this Court on November 23, 1966.

Appellant's claim of illegality in his induction is founded upon 32 C.F.R. #1627.5 and 1627.8 which provides, *inter alia*, that when an appeal is taken to the President the local board shall notify the registrant that the appeal has been taken, and any order to report for induction which has been issued shall be ineffective and shall be cancelled. Appellant's order to report for induction was issued November 1, 1965. Although General Hershey, the national director of the Selective Service System, gave notice on December 29, 1965 to the local board that he was instituting a Presidential Appeal on behalf of appellant and the notice received by the local board shortly thereafter, it is not disputed that formal written notice of the appeal and formal cancellation of the order to report was not given to appellant, although appellant did receive notice that his induction was postponed, without any explanation therefor. The Presidential appeal board considered appellant's case and appellant was classified 1-A by that board on February 17, 1966. Written notice of such action was received by appellant on March 3, 1966. After a request for reconsideration, a postponement of induction to permit him to observe religious holidays, the granting of a request for a transfer of the place of induction, and a denial of reclassification because of a change of occupation, appellant was inducted May 17, 1966.

Appellant contends that he was prejudiced by the failure of the local board to give him the formal notice required by the regulations, in that he lost the opportunity to enlist voluntarily in the army reserves, rather than serve as a draftee. After hearing testimony, the district court found that appellant had actual knowledge of the pendency of the Presidential appeal which, together with his intimate knowledge of the regulations, constituted notice that his order for induction was ineffective so that he could have enlisted in a reserve component; but that, in any event, appellant was not prejudiced by the lack of formal notice because appellant lacked a real desire to join a reserve component. The correctness of these findings is the crux of this appeal, because the law is settled that procedural irregularities in the administration of the Universal Military Training and Service Act, 50 U. S. C. A. App. #451, *et seq.* which do not result in prejudice, will not support a claim for relief. *United States v. Lawson*, 337 F. 2d 800 (Cir. 1964); *Pate v. United States*, 243 F. 2d 99, 104 (5 Cir. 1957); *United States v. Mekolichick*, 234 F. 2d 71 (3 Cir. 1956); *Martin v. United States*, 190 F. 2d 775 (4 Cir. 1951); *United States v. Deahl*, 151 F. 2d 413 (8 Cir. 1945).

We have examined the record carefully. We find evidentiary support for both of these ultimate findings, and we cannot say that they are clearly erroneous.

Notwithstanding that appellant did not receive formal written notice of the taking of the Presidential appeal, he testified that, at a time not specified, he examined his file in the possession of the local board and did see letters from General Hershey and the state director saying that the Presidential appeal had been taken. In a letter to the President of the United States, dated March 3, 1966, he referred to a previous letter written by him on November 5, 1965, and stated that, subsequent to that date, "*** I was informed by Senator Case's office that a review of my case would be taken before the Presidential review board." In

another letter, dated April 5, 1966, addressed to his local board, appellant acknowledged that, while he had no official notice that his case was being reviewed by the Presidential review board, he did have actual knowledge "*** through word of mouth speculation through an assistant in Senator Case's office." Appellant had formal notice that his induction, originally scheduled for November 19, 1965, and postponed to December 9, 1965, had been indefinitely postponed.

From the three deferments appellant sought and obtained, the four postponements of induction and the six appeals, consisting of three hearings before the local board, one review by the State Board, review by the Presidential appeal board, and the other evidence of record, we think that the district judge could properly conclude that appellant suffered no actual prejudice. There was a sufficient evidentiary basis from which he could conclude that appellant lacked any "sincere desire to enlist in any reserve component."

In affirming the district court, we also dissolve the temporary restraining order heretofore issued.

Affirmed.

ORDER OF FOURTH CIRCUIT DENYING RE-HEARING

Appellant's petition for rehearing having been read and considered, it is, this sixth day of March, 1967, by the UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, ORDERED, that said petition be, and it is hereby, denied. The Clerk is directed to issue the mandate forthwith.

In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 208

UNITED STATES EX REL. HOWARD CHARLES LIPSITZ,
PETITIONER

v.

MAJOR GENERAL GINES PEREZ, COMMANDING GENERAL, FORT JACKSON, SOUTH CAROLINA,
RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

On May 17, 1966, petitioner was inducted into the United States Army and was stationed at Fort Jackson, South Carolina. On May 24 he filed a petition for a writ of habeas corpus in the United States District Court for South Carolina, alleging procedural irregularities in the induction process. After a hearing, relief was denied by the district court (Pet. App.

1-12). The court of appeals affirmed *per curiam* (Pet. App. 13-15).

The relevant facts [1] show that on June 9, 1965, petitioner was classified 1-A by his local draft board (Pet. App. 4).[2] Petitioner's application for an occupational deferment was denied, and his 1-A classification was renewed after a hearing before the local board. On October 19, 1965, the State Appeal Board reaffirmed petitioner's 1-A classification by a unanimous vote, and petitioner was ordered to report for induction on November 19, 1965. On November 5 petitioner sent a letter to President Johnson requesting personal intervention and review (Pet. App. 5; R. 82-83). On November 24, 1965, National Selective Service headquarters in Washington, D. C., directed that petitioner's induction be postponed and that his file be forwarded to the National headquarters for review (Pet. App. 5). On November 29 petitioner's local board notified petitioner that his induction had been postponed. An accompanying letter emphasized that the induction was merely postponed, and that the order to report for induction was not cancelled. The

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[1] The undisputed facts are taken from the district court's findings of fact, which were as requested by petitioner (Pet. App. 1-8). References herein are also to the record on appeal ("R.") and to the transcript of hearing ("Tr."), the latter of which we are lodging with the Clerk of this Court.

[2] Petitioner's local board was Draft Board #37, Paterson, New Jersey. On three earlier occasions, petitioner had been classified 1-A, but was thereafter deferred on the grounds that he was a student in pursuit of a Bachelor's degree (Pet. App. 2), a Master's degree (Pet. App. 2-3), and a Doctor's degree (Pet. App. 4).

local board was informed on January 7, 1966, that National headquarters had taken an appeal to the Presidential Review Board—action which under Selective Service regulations (32 C.F.R. 1627.8) automatically invalidates an order to report for induction. The local board did not inform petitioner, as required by 32 C.F.R. 1627.5(a)(1), that an appeal had been taken to the presidential board (Pet. App. 5-6).

Petitioner was classified 1-A by the Presidential Review Board, and was so notified on March 3, 1966 (Pet. App. 6). On March 21, 1966, he was ordered by his local board to report for induction on April 7, subsequently changed to May 17, 1966 (Pet. App. 7-8).

On March 3 petitioner sent another letter to President Johnson criticizing the action of the Presidential Review Board (R. 85-91), in which he stated that subsequent to November 5, 1965, he had been informed by Senator Case's office that a review of his case would be taken before the Presidential Review Board (R. 85). On April 5 petitioner wrote a letter to his local board, copies of which were sent to President Johnson, General Hershey, Senator Case, and the American Civil Liberties Union, complaining that he had had no official notice of the presidential appeal before March 3, 1966, "other than through word of mouth speculation through an assistant in Senator Case's office" (R. 94). At the hearing, petitioner testified that he was prejudiced by the failure of the local board to give him notice of the presidential appeal, since, had he known of that fact between January 20 and March 3, 1966, he would have also known

that the order of induction was effectively cancelled (pursuant to 32 C.F.R. 1627.8), thereby allowing him to join a Reserve component of the Armed Services (Tr. 15, 17).[3]

In rejecting petitioner's claim of prejudice and denying the petition, the district court found that (1) petitioner had *actual* knowledge of the presidential appeal; and (2) that petitioner was not sincere in his belated claim that he intended to join the Reserves had he known of the cancellation of induction, since he actually had had ample opportunity to do so. The court of appeals affirmed these findings. Petitioner now in effect seeks no more than reconsideration of these factual findings; in any event, he can show no prejudice from the failure to receive formal notice of the presidential appeal. There is thus no occasion for further review.

A procedural irregularity such as is here involved is not a basis for rendering an otherwise proper induction procedure a nullity, absent a showing of prejudice. *United States ex rel. Woodard* v. *Deahl*, 151 F. 2d 413 (C.A. 8); see also *United States* v. *Lawson*, 337 F. 2d 800, 812 (C.A. 3); *Pate* v. *United States*, 243 F. 2d 99, 104 (C.A. 5); *Martin* v. *United States*,

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[3] Prior to January 20, 1966, a registrant such as petitioner could, until the actual date of induction, seek and obtain release from the order of induction upon a showing that he had enlisted in a Reserve component of the Armed Services. On January 20, the Secretary of Defense issued Operations Bulletin No. 287, which in effect prevented a registrant from joining the Reserves if he was under an order to report for induction. Petitioner testified that he was aware of Operations Bulletin No. 287 (Tr. 52-53).

190 F. 2d 775 (C.A. 4).[4] The district court properly concluded that, on the facts of this case, petitioner was not prejudiced by the failure to notify him of the presidential appeal. There was ample evidence—the fact that petitioner initiated efforts to secure presidential review, and the admissions in his letters—that petitioner had actual knowledge of the presidential appeal. A formal notice that such an appeal had been taken would thus have told him no more than he already knew. Under the regulations (of which petitioner was obviously aware), the fact of a presidential appeal—not the notice of the taking of the appeal—had the effect of invalidating the order to report for induction.[5] Moreover, petitioner was formally notified of the presidential review on March 3, 1966, and thus knew at that time that he was free

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[4] Petitioner cites (Pet. 14) *United States* v. *Stiles*, 169 F.2d 455 (C.A. 3), as evidencing a conflict among the circuits. In *Stiles* the registrant was classified 1-A, but was not classified *anew* after a personal hearing as required by the then-existing provisions of 32 C.F.R. 625.1. As the court stated in *Stiles*, the purpose of the regulation was to assure the registrant that the reclassification was based upon evidence produced at the hearing, and not upon ideas preconceived before the hearing. Thus, the court found that the registrant was indeed prejudiced by the failure of reclassification, since for purposes of appeal, he was unable to ascertain on what information the board had rested its decision.

[5] The letter of November 29, 1965, from the local board informing petitioner that his order to report for induction was only postponed, not cancelled, was correct, since, at that time, petitioner's file had simply been forwarded to the National Selective Service headquarters, and there was no indication at that time that the National headquarters would recommend a presidential appeal.

to enlist in the Reserves. He made no effort, however, to join a Reserve component between that date and March 21, 1966, when a new order of induction was issued by his local board.[6]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

THURGOOD MARSHALL,
Solicitor General.

FRED M. VINSON, JR.,
Assistant Attorney General.

BEATRICE ROSENBERG,
LAWRENCE P. COHEN,
Attorneys.

JUNE 1967.

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[6] Petitioner could also have sought to join the Reserves prior to January 20, 1966, regardless of whether he was under an order to report for induction (see note 3, *supra*; see also Pet. App. 11).

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